Granite City Journal, Inc. *and* St. Louis Newspaper Guild, Local 47, TNG, AFL-CIO-CLC. Cases 14-CA-15056 and 14-RC-9416

July 22, 1982

DECISION AND ORDER

BY CHAIRMAN VAN DE WATER AND MEMBERS JENKINS AND HUNTER

On November 18, 1981, Administrative Law Judge Arline Pacht issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief, and the General Counsel filed an answering brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions[1] and briefs and has decided to affirm the rulings,[2] findings,[3] and conclusions[4] of the Administrative Law Judge and to adopt her recommended Order.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that the Respondent, Granite City Journal, Inc., Granite City, Illinois, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order.

DECISION

STATEMENT OF THE CASE

ARLINE PACHT, Administrative Law Judge: This case was heard in St. Louis, Missouri, on September 21, 1981. The charge in Case 14-CA-15056 filed on June 11, 1981, as subsequently amended, alleges violations of Section 8(a)(1) and (3) of the National Labor Relations Act (the Act). An election was held on June 25, 1981, to which timely objections were filed by the St. Louis Newspaper Guild, Local 47, TNG, AFL-CIO-CLC (hereinafter called the Union). Thereafter, the Regional Director for Region 14 issued a supplemental decision and order, order directing hearing, and order consolidating cases, thereby consolidating Cases 14-CA-15056 and 14-RC-9416 for hearing. The remaining unresolved objection to the election alleges conduct coextensive with the unfair labor practices in paragraphs 5 and 6 of the complaint. Respondent denies that it engaged in any unlawful conduct.

The parties were given full opportunity to appear, to introduce evidence, and to examine and cross-examine witnesses.

Subsequently, briefs were filed by counsel for the General Counsel (hereinafter the General Counsel) and Respondent which have been carefully considered. Upon the entire record in the case and from my observation of the witnesses, I make the following:

FINDINGS OF FACT

I. JURISDICTION

Granite City Journal, Inc., herein called Respondent, is an Illinois corporation with offices in Granite City, Illinois, where it is engaged in the publication, sale, and distribution of newspapers. During the 12 months ending May 30, 1981, a representative period, Respondent, in the course and conduct of its business operations, received gross revenues in excess of $200,000 from the publication and distribution of its newspapers of which revenues in excess of $50,000 were from advertising agencies for nationally advertised and sold products which agencies are located outside the State of Illinois. In accordance with Section 102.20 of the Board's Rules and Regulations, and Respondent's admission, I find that Respondent is an employer engaged in commerce and in a business affecting commerce within the meaning of Section 2(6) and (7) of the Act.

It is admitted and found that the St. Louis Newspaper Guild, Local 47, TNG, AFL-CIO-CLC, is a labor organization within the meaning of Section 2(5) of the Act.

II. THE ISSUES

In substance, the consolidated complaint alleges in paragraphs 5A-S that, between the date the election petition was filed and the date of the election, Respondent engaged in various forms of conduct such as threatening employees with loss of employment, work opportunities, and discharge; creating the impression that the employees' union activities were under surveillance; soliciting grievances and interrogating employees concerning their

[1] No exceptions were filed to the Administrative Law Judge's dismissal of the allegations that Respondent's president and publisher, Sanders, interrogated and threatened employee Reilly on May 8, 1981.

[2] We hereby correct several inadvertent errors in the Administrative Law Judge's Decision. Thus, employees Tina Hamilton and Leta Jones were hired on May 5, not May 7, and Hamilton resigned on May 26, not May 23. In the Conclusions of Law and Remedy sections of her Decision, the Administrative Law Judge cited calender year 1980 rather than 1981. We find that none of the foregoing inadvertent errors affects the propriety of the Administrative Law Judge's Decision on the merits.

[3] Respondent has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing her findings.

[4] Chairman Van de Water and Member Hunter disavow the Administrative Law Judge's discussion of Respondent's discharge of three supervisors and do not rely on these discharges as a basis for our issuing a bargaining order.

Member Jenkins would, like the Administrative Law Judge, find the impact of these discharges on employees to be an additional factor warranting the bargaining order herein.

union sentiments; implying that it would not negotiate with the Union; and soliciting employees to report on the union activities and sentiments of other employees in violation of Section 8(a)(1) of the Act.

Paragraph 6 of the complaint further alleges that Respondent made the conditions of Tina Hamilton's employment intolerable, causing her termination, and did so because its employees joined, supported, or assisted the Union and in order to discourage them from engaging in such activities in violation of Section 8(a)(1) and (3) of the Act.

The General Counsel seeks the traditional remedies; that is, a cease-and-desist order and reinstatement and backpay for the discriminatee. In addition, he urges that a bargaining order is needed in this case to remedy the coercive effects of Respondent's numerous unfair labor practices, under the standards articulated in *N.L.R.B.* v. *Gissel Packing Co., Inc.*, 395 U.S. 575 (1969), rehearing denied 396 U.S. 869.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Introduction*

The events giving rise to the instant proceeding occurred in the context of an organizational drive beginning on April 29, 1981,[1] during which almost all of Respondent's clerical, circulation, and editorial employees signed union authorization cards. Pursuant to a petition for an election filed by the Union on May 4, an election was conducted on June 25, which resulted in six votes for the Union, seven against, and five ballots cast by persons deemed ineligible to vote by the Regional Director.

B. *Acts of Interference, Restraint, and Coercion*

The Granite City Journal's publisher and president, Rod Sanders, apparently did not learn about the campaign until May 5 when an article in another newspaper announced that the Union had filed a petition for an election. From the date forward, Sanders embarked on a search-and-destroy mission aimed at rooting out any union support among the newspaper's staff.

Evidence of Sander's antipathy to the Union was overwhelming and uncontradicted.[2] On the day that Sanders learned of the Union's petition, he told news editor, Williams, that he felt betrayed, as if he had been stabbed by 20 knives, and that the Donnelly family (holder of 100 percent of the stock in the chain newspapers which included the Granite City Journal) would never permit a union to invade the shop.

C. *May 7: Paragraphs 5A–E of the Complaint*

On May 7, the day after Tina Hamilton and Leta Jones were hired as advertising salespersons, Sanders called them into his office and, after making reference to a newspaper article discussing the Union's organization campaign at the Journal, said he could not understand why the employees were doing this for he believed he had good rapport with them. He assured the women that his door was always open to them if they had any problems. He also mentioned that, although he had hired additional staff members in anticipation of merging the Granite Journal with another newspaper, the advent of the Union had compelled him to put those plans aside. He further mentioned that two "big wheels" were primarily responsible for promoting the Union, but did not state whom he had in mind. In the same conversation, he told Jones and Hamilton that the only persons who would remain were those who wanted to work for the paper, but that their jobs were not in jeopardy. He also advised them that some of the Journal's major business accounts which were being handled by Advertising Manager David Wachter and advertising salesman Michael Hildebrand would be opening up and that they should closely observe whomever they were accompanying on calls so that they could learn how to handle their accounts.[3]

In determining whether statements attributed to Sanders support the unfair labor practices alleged in paragraphs 5A–E of the complaint, it is important to view them in context, and to bear in mind that they were directed to the two most recent, and therefore most vulnerable, members of Respondent's workforce. Whether taken in their entirety or in isolation, Sanders' remarks were intimidating and coercive. When Sanders told the women that the paper was overstaffed and that plans to acquire another newspaper had to be shelved because of the Union's entry on the scene, there could be little doubt that he intended and did convey a threat of lost employment or work opportunities. Respondent contends that Sanders simply made a straightforward announcement of a business decision. Respondent's argument does not persuade for Sanders' comment was not a reasoned prediction based on objective facts demonstrating probable consequences outside the employer's control. See *N.L.R.B.* v. *Gissel Packing Company, supra*, 395 U.S. at 617, 619, his was not free speech protected by Section 8(c) of the Act but an unadorned warning of adverse consequences designed to discourage the employees from engaging in collective activity.

Sanders' remarks that the only people who would continue with the paper were those who wished to work there, coupled with allusions to several large accounts opening up, were neither ambiguous nor lost on his listeners. Hamilton and Jones understood his message quite well: those who supported the Union would be terminated. Hamilton transmitted Sanders' message to Hildebrand, who as the principal union activist on the staff, surely did not keep the information to himself. There are few threats taken more seriously by employees than those which affect job security. See *N.L.R.B.* v. *Jamaica Towing, Inc.*, 630 F.2d 208, 212–213 (2d Cir. 1980). Accordingly, threats such as Sanders' are condemned by Section 8(a)(1) of the Act. Respondent submits that Sanders' reference to "big wheels" cannot be construed

[1] Hereinafter, unless otherwise specified, all dates refere to 1981.

[2] Sanders was terminated on August 13, under circumstances which necessitated police assistance. He was succeeded by Daniel Donnelly, who since July 3 had served as advertising director. Because of the manner in which Sanders was fired, Respondent alleges it was unable to obtain his appearance at the instant hearing.

[3] Hildebrand had been instrumental in arranging the first organizational meeting between the Union's business agent and five other employees. Wachter had attended this meeting.

as creating an impression of surveillance for he did not mention who these big wheels were and, in any event, could have obtained such information legitimately from the supervisors who attended the first organizational meeting on April 29. Respondent ignores the fact that Sanders learned of the union campaign from a newspaper article, not from his supervisors. More importantly, whatever the source of his information, Sanders' statement was made in connection with accounts opening up and jobs being available only to those who wanted to remain. Thus, there was implicit in his reference to "big wheels" a threat of possible future retaliation. Within this framework, Sanders' statement was calculated to give the impression of unlawful surveillance.

Under ordinary circumstances, an employer's statement to new employees that his door is always open could be viewed as fairly innocuous. Here, however, there was no showing that Sanders customarily maintained an open-door policy or at any previous time solicited complaints from individual employees. Given the entire thrust of Sanders' remarks, and bearing in mind his future efforts to pry information from these same employees, I cannot view his invitation as anything but an attempt to solicit complaints during the sensitive period when the Union was attempting to establish itself as the bargaining representative for the employees, and thereby undermine support for the Union. See *Associated Milk Producers, Inc.*, 255 NLRB 750 (1981).

Similarly, it could be argued that Sanders' questioning Hamilton about her union sympathies was so offhand as to be a mere expression of curiosity. However, in light of all the attendant circumstances—the newness of the personnel involved, the timing of the query—just after the Union's petition was filed, and the fact that this was the first in a series of interrogations, I find that the question was coercive and therefore violative of Section 8(a)(1).

D. *May 8: Paragraphs 5F–H of the Complaint*

On May 8, Sanders called Michael Reilly, county reporter and formerly sports editor,[4] into his office and stated, "I guess I really don't have to ask where you stand do I?" to which Reilly responded, "No, you don't." Sanders then launched an antiunion diatribe, accusing unions of having outlived their purpose, and being communistic. He railed that he would not permit a union to organize the newspaper and tell him how to run it thereby destroying what he had been attempting to achieve. Implying that he was fearful of losing his job, he said he would do whatever was necessary to save his career. Although Reilly attempted to assuage him, pointing out that matters could be resolved without hostility, Sanders persisted in his views and concluded the meeting by accusing the reporter of participating in conduct which was ruining his life.

Although Sanders' conversation with Reilly illustrates the dimensions of his union animus, I do not find that his statements as alleged in paragraphs 5F and H constitute unfair labor practices. For instance, Sanders' assumption that he knew where Reilly stood *vis-a-vis* the Union was more rhetorical than informational as alleged in paragraph 5F of the complaint. See *N.L.R.B.* v. *Marsellus Vault & Sales, Inc.*, 431 F.2d 933, 937 (2d Cir. 1970). Further, I find nothing in the record which supports paragraph 5H that during this conversation Sanders threatened Reilly with unspecified reprisals. However, Sanders' assertion that he would not permit a union to tell him how to run his business is a different matter. Given the vehemence of his opposition to the Union, it is reasonable to translate this comment into a warning that he would resist bargaining. See *Mark J. Leach d/b/a Mark J. Leach Electrical Contractors*, 251 NLRB 1100, 1109 (1980).

E. *May 12–22: Paragraphs I–N*

On May 12, Sanders again spoke privately to Jones and Hamilton and asked them to provide him with information about what was occurring in the office. On or about this date, Hamilton complained to Sanders that she was not receiving adequate training, mentioning in particular that, on one occasion, when she was accompanying Hildebrand on his business calls, he left her waiting in the car for 30 minutes while he visited an attorney's office. She also told Sanders that Hildebrand suggested that he could include visits on her worksheets which, in fact, were not made.

On May 14, Union Business Agent Steinke met with virtually all of the employees after work. He again explained that the purpose of the membership cards was to designate the Union as their collective-bargaining representative as well as to obtain an election.

On arriving home after the meeting, Jones learned that Sanders had telephoned her. On returning his call, Sanders asked if she had attended the meeting and which of the other employees had been there. He then reported on what various employees had said and asked her to verify his information. For example, he asked whether it was true that Hildebrand had posed questions the entire evening, and particularly probed her as to what Crider, Wachter, and Gibson had said. He concluded by asking if there were anything more she would like to add.

Over the next several weeks, Sanders called both Jones and Hamilton at their homes frequently. As Jones recalled, his inquiries during the calls were focused on finding out what others might have said about him.

On May 15, Sanders also called Hamilton at her home and asked her to observe whether Hildebrand was accurately reporting calls on his worksheets. Several days later, Sanders assigned Hamilton to work with Hildebrand on a permanent basis and again urged her to keep tabs on him and to determine whether his reports were precise. For the balance of that week, Sanders telephoned Hamilton at home and persisted in inquiring whether Hildebrand was falsifying any entries on his worksheets although Hamilton assured Sanders he was not. Hamilton disclosed Sanders' requests to Hildebrand.

Extended discussion and analysis of Sanders' statements is unnecessary to reach the conclusion that he was guilty of the conduct alleged in paragraphs 5I through N of the complaint.

[4] Reilly was uncertain of the date that he ceased functioning as sports editor. However, the record shows that Richard Bloom succeeded him in that position on April 27, 2 days before Reilly signed the Union's authorization card.

In defense to the allegation in paragraph 5I that Sanders solicited employees to engage in unlawful surveillance, Respondent submits that Sanders simply was responding as any prudent business man would to information about Hildebrand's unprofessional conduct. However, it would be naive to regard Sanders' request as if it were made in a vacuum ignoring Hildebrand's role as the Union's principal inhouse proponent. When taken together with Sanders' earlier insinuation that several of Hildebrand's accounts would become available, made before any adverse comments about the salesman had come to Sanders' attention, these requests for surveillance plainly were aimed at obtaining any information which could be used to purge Hildebrand from Respondent's ranks because of his union activity. As such, Respondent was engaged in conduct which is proscribed by Section 8(a)(1) of the Act. See *Maywood, Inc.*, 251 NLRB 979, 985 (1980).

The allegations in paragraphs 5J, K, and L stem from the May 14 telephone conversation between Sanders and Jones which took place after the union meeting on the same evening. In asking Jones' opinion of the Union and its business agent, Sanders was engaged in prohibited interrogation. By describing what had occurred at the meeting, Sanders again left the unmistakable impression that he had engaged in surveillance. See *Hoover Industries*, 240 NLRB 593, 606 (1979). And by urging Jones to confirm what had occurred and to report any additional information, Sanders was engaged in the rankest sort of interrogation.

F. *May 23: Paragraphs Q–S of the Complaint*

On May 22, Jones accused Hamilton of having warned other employees to avoid her because she was spying on them for Sanders. Although Hamilton denied doing so, a serious argument ensued. At the end of the workday, Jones quit.

The next morning, Sanders invited Hamilton to accompany him while he ostensibly made business calls. Instead, he drove aimlessly around town for 1-1/2 hours questioning Hamilton about her contretemps with Jones. Sanders first asked Hamilton if she had in fact told her coworkers that Jones was an informer and again queried her as to whether Hildebrand was doctoring his worksheets. He then warned that her job was in jeopardy and moments later asked her to supply him with information about the activities of other employees.

Hamilton called her supervisor, Wachter, at the end of the day and resigned, explaining that she could no longer withstand the pressures that Sanders was imposing, by insisting that she spy on her fellow employees.

There can be no doubt that when Sanders warned Hamilton that her job was at stake and linked this threat with another request to engage in surveillance of her coworkers, Sanders was continuing a course of unlawful conduct which began on the day he learned of union activity at the Journal.

As culpable as Sanders was of the many unlawful acts ascribed to him, I find no support in the record for the allegation in paragraph 5S that he interrogated Hamilton concerning the union sentiments and activities of other employees. In asking Hamilton whether she had informed other staff members that Jones was serving as his spy, Sanders seemed more interested in finding out how he was regarded by the employees than in probing their union sentiments.

G. *June 1 and 2: Paragraphs O–P*

A day or so after Jones quit, Sanders called, urging her to return and promising that the atmosphere would be more relaxed. Despite these promises, when Jones resumed working on June 1, Sanders asked her to accompany Wachter on his business calls and to familiarize herself with his accounts. The next day, Sanders telephoned her to ask whether Wachter was falsifying his timesheets. These phone inquiries continued on virtually a daily basis although Sanders had no legitimate business reason to put Wachter under surveillance. During one of these calls, Sanders mentioned that it was unlawful for him to solicit information. Notwithstanding this acknowledgment, he asked if there were anything she wished to tell him. Jones resigned again on June 7.

Disregarding his assurances to Jones that she would return to a less stressful situation, he sought to pry information from her and directed her to spy on Watcher, whom he apparently suspected of being involved in union activity. By so doing, Sanders again was trying to use Jones as his instrument in an unlawful cause in violation of Section 8(a)(1).

Jones' refusal to spy for Sanders did not deter him. On June 8, three supervisors, Williams, Wachter, and Reilly, each of whom had signed union authorization cards, were terminated by Sanders.[5] The reason which Sanders assigned for the terminations was patently pretextual: they had failed to report employee morale problems to him.

H. *Hamilton's Constructive Discharge*

As described above, in the weeks following her hire, Hamilton received incessant phone calls from Sanders during which he interrogated her about her own union sympathies and entreated her to spy on her coworkers. Finally, on May 23, he accused Hamilton of causing Jones to suffer a nervous breakdown by alienating her from other employees and then threatened to discharge her. Hamilton quit less than a month after she was employed because, as she testified, she no longer could cope with the pressures Sanders was imposing upon her.

The Board has held that where an employee elects to quit because an event or requirement imposes upon him "an onerous or burdensome choice between remaining in employment or acceding to his employer's request and such event is generated by an employer's union animus" a termination under such circumstances will be regarded as a constructive discharge. *John Dory Boat Works, Inc.*, 229 NLRB 844, 850–851 (1972).

In the present case, although Sanders' persistent requests to Hamilton initially were designed to interfere with the union activities of those upon whom she was to spy, it was she who became the first victim of his unlaw-

[5] Shortly before that date, Reilly had resumed his position as sports editor.

ful conduct. For a number of weeks, Hamilton withstood the almost daily pressures Sanders created. However, on May 23, these pressures reached a crescendo. Hamilton reasonably could infer from Sanders' comments that he had become suspicious of her own union predilections and was conditioning her continued employment on her willingness to spy on her fellow employees. The choice which Sanders' offered would have been intolerable to the most resilient of employees. Given these options, it cannot be said that Hamilton relinquished her post voluntarily; rather, she was driven away. Indeed, her resignation may be viewed as a means of protesting Sanders' unlawful conduct. See *Fidelity Telephone Company*, 236 NLRB 166, 175 (1978). Accordingly, I conclude that Respondent constructively discharged Hamilton in violation of Section 8(a)(3) and (1) of the Act.

I. *The Union's Card Majority*

In *Gissel Packing Co., Inc., supra* at 614, the Supreme Court sanctioned reliance on authorization cards as an indicia of employee support and as a basis for issuance of a bargaining order where there was a showing that the Union had attained a majority and, thereafter, the employer engaged in unfair labor practices which "have the tendency to undermine majority strength and impede the election process." Accordingly, it is necessary to determine next whether the Union enjoyed the support of a majority of employees in the bargaining unit on or before the date that it filed its petition for an election.

By May 7, the date on which Respondent became aware of the Union's organizational drive and commenced a countercampaign of its own, only 3 of the 18 employees in the bargaining unit had not signed the dual-purpose cards which admittedly served as both membership applications and designations of the Union as the employees' bargaining representative.

Respondent argues that all but four of the cards are tainted and may not be relied on to establish the Union's majority. I disagree and find that the Union had more than majority support when it filed the petition for an election.

At the outset, Respondent submits that four of the cards signed at the April 29 meeting with the Union's business agent must be discounted because they were signed in the presence of two supervisors, Wachter and Reilly. Wachter was, by stipulation, a supervisor within the meaning of the Act. However, limited supervisory involvement in organizational activity is insufficient to vitiate the validity of a union's card majority unless there is a showing of substantial supervisory intervention designed to intimidate those who sign. See *La Mousse, Inc.*, 259 NLRB 37 (1981). No such showing was made here.

Further, the record establishes that Reilly had been a sports editor until April 27, but on the date he signed a card was a statutory employee included in the bargaining unit. Therefore, neither Reilly's card nor the cards which he solicited from Alice Gibson and Georgeann McGee are invalid.

Charlotte Crider was a director of the corporation in name only, exercising no managerial or supervisory functions. Thus, she, too, was properly included in the bargaining unit. She claimed, however, that Steinke did not read the membership card at the April 29 meeting and that she was led to believe it was to be used to obtain an election. James DeCourcey and Michael Carty also stated that they signed cards without reading them and on the assurance of employees Hildebrand and Jones that they were to be used to seek an election.

Crider may not have recalled that Steinke read the card at the meeting, but other employees did. Moreover, it is unlikely that an experienced business agent like Steinke would have failed to explain the card's purposes. Therefore, I credit Steinke's account and conclude that Crider signed the card after being adequately apprised of its potential uses. Further, Respondent acknowledged that the cards are clear and unambiguous on their face. It is difficult to believe that employees working for a newspaper, an occupation which presumably calls for a degree of literateness, would ignore or fail to appreciate the contents of the cards they were signing. What is more, these three employees attended a union meeting on May 14 at which the purpose of the card again was explained. In light of these factors, I decline to discount the cards of Crider, DeCourcey, or Carty.

Pam Moran testified that she initially understood she was signing a membership card in the Union, but then was somewhat confused when Hildebrand told her it was for an election. It was apparent from Moran's testimony that she was willing to designate the Union as her bargaining agent prior to Hildebrand's remarks, and, if any doubt as to the card's purpose lingered, it was cured by the explanation Steinke offered at the May 14 meeting which she attended.

Only one challenged card bearing the signature of employee Randy Hillis was not properly authenticated, and therefore will be excluded from the cards relied upon to support the Union's claimed majority. Accordingly, I conclude that on May 7, 1980, the Union had validly signed cards from 14 of the 18 employees then in the unit.

J. *A Bargaining Order Is Warranted*

The final question which remains is whether Respondent's unfair labor practices in the aggregate warrant issuance of a remedial bargaining order. Even where, as here, an election has been held, it may be set aside and a bargaining order granted where objectionable conduct has invalidated the proceeding,[6] and the effects of that conduct cannot be disspelled by traditional remedies.[7] Applying the principles set forth in *Gissel*, I conclude that "The possibility of erasing the effects of past practices and of ensuring a fair election . . . is slight and that employee sentiment once expressed through cards would, on balance, be better protected by a bargaining order . . . ." *Id.* at 614–615.

Respondent argues that, if it committed unfair labor practices, they were so insignificant as to have no deleterious effect on the election process. Respondent would be correct if only a few isolated incidents of improper conduct occurred. But that was not the case here.

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[6] *Irving Air Chute Company, Inc.*, 149 NLRB 627 (1964); *American Display Manufacturing Co., Inc.*, 259 NLRB 21 (1981).

[7] *N.L.R.B. v. Gissel Packing Co., supra* at 614.

Within 2 days after the union campaign commenced, well over a majority of the employees in the bargaining unit signed authorization cards. As soon as Respondent's president learned of the Union's support, he began waging a campaign to interfere with the employees' free choice. Throughout the next month, Sanders engaged in repeated acts of interrogation, threatened employees with a loss of job opportunities and discharge, created the impression of surveillance, pressured employees to spy on one another, and, finally, badgered an employee to quit. Less than 2 months after the organizational drive began, the Union lost the election by two votes.

Respondent attempts to minimize the impact of its unlawful practices by pointing out that Sanders' attack was waged directly upon just a few employees. However, in a small shop like the Journal, where the employees enjoyed an informal working relationship, Sanders' conduct could hardly remain secret.

If there was any employee who failed to receive Respondent's message directly, no doubt remained when three supervisors who were supportive of the Union were discharged shortly before the election, for reasons which hardly disguised the true antiunion motive prompting them. The abrupt departure of the supervisors could not have gone unnoticed and had to leave incalculable wounds upon those who remained.

Respondent further urges that because Sanders was the sole malfeasor and was replaced by a new president, a cease-and-desist order is all that is required. However, Respondent is not absolved of responsibility for Sanders' acts by virtue of his discharge.[8] Surely, the Donnelly family, owners of the newspaper chain of which the Granite City Journal is a member, was aware that a union election was pending. It is inconceivable that they were not advised at least as to when and why three supervisors were summarily terminated. In light of the abundant evidence of Sanders' wrongdoing, if Respondent wished to disassociate itself from his actions, it could have taken such steps as issuing reassurances to its employees publicly condemning his practices or offering reinstatement to the employees wrongly discharged. The Supreme Court's reasoning as to why a bargaining order may be needed even where an employer's unfair labor practices have ceased is particularly apt here:

> [A] bargaining order is designed as much to remedy past election damage as it is to deter future misconduct. If an employer has succeeded in undermining a union's strength and destroying the laboratory conditions necessary for a fair election, he may see no need to violate a cease and desist order by further unlawful activity. The damage will have been done, and perhaps the only fair way to effectuate employee rights is to reestablish the conditions as they existed before the employer's unlawful [conduct].[9]

Damage has been done. Respondent's conduct did undermine the Union's majority status and negated the possibility that a free and fair election could be held under the requisite laboratory conditions. There is no other explanation for the abrupt change of mind of those employees who supported the Union at the end of April and then voted against the Union less than 2 months later.

In addition, Respondent submits that there has been substantial turnover among its employees, suggesting that the issuance of a bargaining order would deprive the current work force of its right to exercise a free choice through the election process. The record is unclear as to the precise number of employees originally in the bargaining unit who subsequently were transferred, promoted, discharged, or quit. However, it appears that a core of employees who were part of the Union's initial majority remain in Respondent's employ and have not sought to withdraw their membership-authorization cards. Even assuming there was evidence of significant turnover, Board precedent dictates that I give it little or no weight. *Justak Brothers and Company, Inc.*, 253 NLRB 1054 (1980). To take such a factor into account would merely afford "an added inducement to the employer to indulge in unfair labor practices in order to defeat the union in an election. He will have as an ally, in addition to the attrition of union support inevitably springing from delay in accomplishing results, the fact that turnover itself will help him, so that the longer he can hold out the better his chances of victory will be." *Justak Brothers, supra*, quoting *N.L.R.B.* v. *L. B. Foster Co.*, 418 F.2d 1, 5 (9th Cir. 1969), cert. denied 397 U.S. 990 (1970). In sum, I conclude that, in light of the nature and number of Respondent's unfair labor practices, the election should be set aside and that a bargaining order should issue retroactive to May 7 to remedy the unfair labor practices found herein.[10]

CONCLUSIONS OF LAW

1. Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. The following employees of Respondent constitute a unit appropriate for the purposes of collective bargaining within the meaning of the Act:

> All employees employed by Granite City Journal, Inc. at its Granite City, Illinois, facility, including office clerical, advertising, inside circulation and editorial employees, excluding professional employees, guards and supervisors as defined in the Act.

4. Commencing on or about May 4, 1980, and continuing thereafter, the Union was designated by a majority of Respondent's employees in the above-described unit as their exclusive bargaining representative within the meaning of Section 9(a) of the Act.

[8] Respondent offered no explanation for Sanders' termination.

[9] *Gissel Packing Co., supra*, 395 U.S. at 612.

[10] Where, as here, the Union has made no demand for bargaining, the Board has tied the effective date of the order to the date on which the employer initiated its campaign of unfair labor practices, if on that date the Union had majority support. *Rodeway Inn of Las Vegas*, 252 NLRB 344, fn. 3 (1980). The record shows in the present case that the Union attained majority status no later than May 4, the date it filed its election petition, and that Respondent's unlawful conduct commenced on or about May 7.

5. Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(1) of the Act by coercively interrogating employees concerning their union activities or sentiments, or the union activities or sentiments of other employees; creating the impression that the employees' union activities were under surveillance; soliciting grievances from employees; implying that it will not negotiate with the Union; soliciting employees to inform on the union activities of their coworkers; and threatening employees with discharge, loss of employment or work opportunities for engaging in union activities.

6. Respondent violated Section 8(a)(3) and (1) of the Act by constructively discharging employee Tina Hamilton on May 26, 1980.

7. Respondent did not violate Section 8(a)(1) of the Act by engaging in the conduct described in paragraphs 5F, H, and S of the complaint.

8. By its violations of Section 8(a)(1) and (3) of the Act, as summarized above, Respondent has engaged in objectionable conduct as averred in Objection 1 and has thereby invalidated the election conducted on June 25, 1980, and prevented a free and fair reelection. Therefore, to best serve the purposes of the Act, is required to recognize and bargain with the Union as of May 7, 1980, the date on which Respondent embarked on a course of conduct which interfered with, coerced, and restrained its employees in the exercise of their rights guaranteed under Section 7 of the Act.

The aforesaid unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Having found that Respondent has engaged in certain unfair labor practices, I shall recommend that it cease and desist therefrom and take certain affirmative action designed to effectuate the purposes and policies of the Act. Because Respondent committed numerous unfair labor practices as found herein, I also shall recommend that Respondent cease and desist from in any manner interfering with, restraining, and coercing employees in the exercise of their rights guaranteed by Section 7 of the Act and bargain upon request with the employees' designated collective-bargaining representative, St. Louis Newspaper Guild, Local 47, TNG, AFL-CIO-CLC.

In addition, Respondent will be required to offer Tina Hamilton immediate and full reinstatement to the job of which she was unlawfully deprived, or, if such job no longer exists, to a substantially equivalent position without prejudice to her seniority or other rights and privileges previously enjoyed. Further, Respondent will be ordered to make Hamilton whole forthwith for any loss of pay she may have suffered by reason of her discharge on May 26, 1980, to the date of Respondent's offer to reinstate her, less any net earnings during that period, calculated in accordance with the Board's formula set forth in *F. W. Woolworth Company*, 90 NLRB 289 (1950), with interest as called for in *Florida Steel Corporation*, 231 NLRB 651 (1977).

Upon the foregoing findings of fact and conclusions of law and the entire record, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

ORDER[11]

The Respondent, Granite City Journal, Inc., Granite City, Illinois, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Threatening employees with discharge, loss of employment, or work opportunities or otherwise threatening to discriminate against any employee for engaging in union activities.

(b) Coercively interrogating employees concerning their union membership, activities, or sentiments or those of other employees; or requesting employees to report on the union activities of others.

(c) Giving employees the impression that their union activities are under surveillance.

(d) Suggesting that employees present their grievances for resolution.

(e) Warning employees that, if they choose to be represented by a bargaining representative, Respondent will not negotiate with it.

(f) Harassing any employee in an attempt to compel the employee to report on the union activities of fellow employees.

(g) In any other manner interfering with, restraining, or coercing its employees in the exercise of their rights guaranteed them under Section 7 of the Act.

2. Take the following affirmative action which I find necessary to effectuate the policies of the Act:

(a) Offer Tina Hamilton immediate and full reinstatement to her former job or, if that job no longer exists, to a substantially equivalent position of employment, without prejudice to her seniority or other rights and privileges previously enjoyed, and make her whole for any loss of earnings incurred by her as a result of her unlawful termination, with interest thereon to be computed in accordance with the formula set forth in *Florida Steel Corporation*, 231 NLRB 651 (1977), and *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962).

(b) Recognize and, upon request, bargain collectively and in good faith with St. Louis Newspaper Guild, Local 47, TNG, AFL-CIO-CLC, as exclusive representative of the employees in the bargaining unit described below, with respect to wages, hours, and other terms and conditions of employment, and, if an understanding is reached, embody such understanding in a signed agreement. The appropriate unit is:

> All employees employed by Granite City Journal, Inc. at its Granite City, Illinois, facility, including office clerical, advertising, inside circulation and editorial employees, excluding professional employees, guards and supervisors as defined in the Act.

(c) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all

[11] In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Post as its Granite City, Illinois, facility copies of the attached notice marked "Appendix."[12] Copies of said notice, on forms provided by the Regional Director for Region 14, after being duly signed by Respondent's representative, shall be posted by it immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to ensure that said notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director for Region 14, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply therewith.

[12] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

After a hearing at which all sides had an opportunity to present evidence and state their positions, the National Labor Relations Board found that we have violated the National Labor Relations Act, as amended, and has ordered us to post this notice.

The Act gives all employees these rights:

To organize themselves

To form, join, or help unions

To bargain as a group through a representative they choose

To act together for collective bargaining or other mutual aid or protection

To refuse to do any or all of these things.

WE WILL NOT threaten employees with discharge, loss of employment or work opportunities, or otherwise discriminate against any employee for engaging in union activities.

WE WILL NOT coercively interrogate employees as to their union sympathies or activities, or those others, nor ask employees to report on the union activities of their coworkers.

WE WILL NOT give employees the impression that their union activities are under surveillance.

WE WILL NOT suggest that employees present grievance to us for resolution.

WE WILL NOT warn employees that if they choose to be represented by a bargaining representative we will not negotiate with it.

WE WILL NOT harass any employee in an attempt to compel that employee to report on the union activities of other employees.

WE WILL NOT in any other manner interfere with the right of our employees to engage in organizational or collective activity or to refrain from such activities.

WE WILL offer Tina Hamilton immediate and full reinstatement to her former job or, if that job no longer exists, to a substantially equivalent job, without prejudice to her seniority or other rights or privileges previously enjoyed; and WE WILL make her whole for any loss of earnings she may have suffered by reason of our discrimination against her, plus interest.

WE WILL, upon request, recognize and bargain with St. Louis Newspaper Guild, Local 46, TNG, AFL-CIO-CLC, as the exclusive representative of the employees in the bargaining unit described below, with respect to wages, hours, and other terms and conditions of employment, and, if an understanding is reached, embody such understanding in a signed agreement. The appropriate unit is:

All employees employed by Granite City Journal, Inc. at its Granite City, Illinois, facility, including office clerical, advertising, inside circulation and editorial employees, excluding professional employees, guards and supervisors as defined in the Act.

GRANITE CITY JOURNAL, INC.